IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C .W.P.No.15738 of 1996

DATE OF ORDER:

Chander Mohan and Another

...Petitioner(s)

Versus

State of Haryana and Others

....Respondent(s)

CORUM : HON'BLE MR. JUSTICE M.M. AGGARWAL

.*.*.*.

Present: Mr. V.K. Sharma, Advocate and
Mr. G.S. Bal, Advocate.
Mr. Jitender Chauhan, Addl.A.G, Haryana.

M.M. AGGARWAL,J

Chander Mohan petitioner is working as Storeman in the office of Deputy Controller Civil Defence, Hisar. He and another person Khushwant Singh had filed the present writ petition and have sought appointment to the post of Storeman Class III. Three posts were advertised by public notice copy Annexure P-8 and applications were to be made by 24.7.1995. Then a select list copy Annexure P-10 was prepared on 30.7.1995. Three persons were selected as Storeman and then given appointment. A waiting list of seven persons was prepared out of which the

persons mentioned at Serial Nos.1,2 and 6 in the list, were given appointments. Khushwant Singh petitioner No.2 is a person mentioned at Serial No.3 of that waiting list and was not given appointment. On behalf of the State, it was pleaded in an earlier writ petition bearing CWP No.1015 of 1996 that application of Chander Mohan was not received and that petition was dismissed.

Now according to the petitioners, all the appointees, now respondents No.4 to 9 are the persons, who were either close themselves or whose parents or relatives were close to S.P Rathore Director General Home Guard and Civil Defence now respondent No.3 and therefore they were selected and given appointments. The details of such closeness etc had been given in para No.18 of the petition.

In the reply to this writ petition, it had been stated on behalf of the State that selection committee was made. About 250 applications were rejected. Since the application of petitioner No.1 Chander Mohan was not accompanied by Matriculation Certificate, that was also rejected and not considered. As far as Khushwant Singh was concerned, it had been pleaded that first two candidates in the waiting list were appointed and when another vacancy became available, he (Khushwant Singh) was asked to come present but he did not and then offer was made to the 4th person, who also did not come and offer was then made to 5th person but he had joined somewhere else and did not come and then it was offered to 6th person, who had joined.

Sh. V.K. Sharma, counsel appearing for petitioner No.1 had argued that when the advertisement was for three vacancies and three persons were selected for those vancancies, then no waiting list should have

been prepared and six persons could not be appointed. He relied on a judgment of Hon'ble Supreme Court reported in Surinder Singh v. State of Haryana, 2001 JT 5-461 (TLS) SC 34909. It was further argued that the State had taken contradictory plea. Originally they had said that the application from petitioner No.1 was not received and then they had said that it was not accompanied by Marticulation Certificate and therefore it was rejected. It was argued that the allegations of malafide have not been controverted by S.P.S Rathore respondent No.3 against whom these were made.

On behalf of petitioner No.2, Khushwant Singh, it was argued that Partap Singh, who was mentioned at Serial No.6, happened to be son of a driver, who was working in the Home Guard and therefore by-passing Khushwant Singh, who was at Serial No.3, this person Partap Singh mentioned at Serial No.6, was appointed.

Attention was drawn to copy Annexure P-12. It was regular appointment letter dated 20.10.1995 issued to Partap Singh and he was given 15 days' time to join whereas it was pointed out that as per the averments and pleadings of the respondents only UPC dated 10.10.1995 was sent to Khushwant Singh, which was not a letter of appointment and only five days' time was given to come. It was argued that it was just a made-up affair to bye-pass petitioner No.2 and appoint Partap Singh whom respondents wanted to appoint.

This case pertains to appointment of Clause III Employees. The allegations of malafide have been denied by the State. There had been a selection committee. From the written statement, it would come out that there had been a selection committee consisting of Joint Secretary Home

and Deputy Commandant Home Guards apart from respondent No.3. The detailed marks given by each member of the selection committee have been depicted in the written reply and then select list was prepared and persons appointed. It would not have been necessary for DGP himself to controvert the allegations levelled in respect of each of respondents No.4 to 9 for their being selected for appointment by leaving the petitioners or other persons. Petitioners are not in service. The judgment relied on by counsel for the petitioners reported in Shri Balwant Rai Mahajan v. Shri V.P Khosla, Deputy Controller and Others, 1979(1) SLR Himachal Pradesh High Court, 391 is in a case of dismissal of an employee, where malafide were alleged. This is a case of selection and initial appointment. Therefore, malafide, if any alleged do not affect the present case merely because these were not controverted by respondent No.3 himself. Khushwant Singh petitioner No.2 was mentioned at Serial No.3 of the waiting list and when Khushwant Singh had joined petitioner No.1 in filing this joint writ petition then the plea that only three posts had been advertised and six could not be filled, will not be available to the present petitioners.

Khushwant Singh petitioner No.2 was resident of Chandigarh. When the persons mentioned at Serial Nos.1 & 2 of the waiting list had been appointed then he should have been vigilant enough and should have taken care to see whether any further post was falling vacant. Even if Partap Singh mentioned at Serial No.6 of waiting list was son of the driver employed in the Punjab Home Guard, it cannot be said that right of Khushwant Singh was ignored. There is another man Sanjay Kumar mentioned at Serial No.4, who was also informed in the same manner and he did not join. Then person mentioned at Serial No.5 had got some other

employment and therefore he did not join and then only the person mentioned at Serial No.6 was appointed. No malafide or illegality can be said to be attached to the action of the respondents in appointing the person mentioned at Serial No.6 of the waiting list of that select list.

The selections had been by a Committee. Select list had been prepared and appointments were given according to the select list.

There is no merit in the petition and the same is dismissed.

February , 2007 (M.M. AGGARWAL)
manoj JUDGE